

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISIONEDDIE LEE JOHNSON
(Tarrant CID # 0235907)

VS.

CAPTAIN PEDIGO, et al.

§ CIVIL NO. 4:13-CV-841-A(BJ)

§
§
§
§ CLERK, U.S. DISTRICT COURT
§ BY DeputyFINDINGS, CONCLUSIONS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE AND NOTICE AND ORDER

In this new civil case, Tarrant County jail inmate/plaintiff Eddie Lee Johnson has filed a complaint seeking monetary damages relief under 42 U.S.C. § 1983, but he has not paid the full filing and administrative fees nor has he sought to proceed in forma pauperis.¹ Resolution of the pro se plaintiff's fee-payment status was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b). The findings, conclusions and recommendation of the United States Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

A. NATURE OF THE CASE

This case is a new civil action.

B. PARTIES

Eddie Lee Johnson is the plaintiff. He has named as defendants in this suit Captain Pedigo, Captain Gravitt, and Lieutenant Fowler.

¹This is one of three new civil lawsuits filed by Tarrant County inmate Eddie Lee Johnson on the same day: *Johnson v. Tarrant County, et al.*, No. 4:13-CV-838-O(BJ); *Johnson v. Pedigo, et al.* No. 4:13-CV-841-A(BJ); and *Johnson v. Vazquez, et al.*, No. 4:13-CV-842-A(BJ).

C. LEGAL ANALYSIS

Although plaintiff Eddie Lee Johnson has not filed a motion for leave to proceed in forma pauperis in this case, as he has also not paid the full filing and administrative fees, the Court must review whether he is eligible to proceed in-forma-pauperis under 28 U.S.C. § 1915. Inmate Eddie Lee Johnson lists his Tarrant County identification number as 0235907 and his Texas Department of Criminal Justice number as 554799. Court records reveal that as a result of previously filing frivolous suits, Johnson is barred from proceeding under 28 U.S.C. § 1915 in any civil action or appeal filed while he is incarcerated or detained unless he is under imminent danger of serious physical injury.² Johnson obtained the qualifying dismissals in this the United States District Court for the Northern District of Texas.³ After review of factual allegations in the complaint and supporting papers in this case, Johnson has not set forth grounds for leave to file in compliance with 28 U.S.C. § 1915(g). Thus, the undersigned finds that Eddie Lee Johnson (Tarrant County CID 0235907 [TDCJ No. 554799]) is not

²As a result of the Prison Litigation Reform Act (PLRA) amendments to 28 U.S.C. 1915, section 1915(g) provides that a prisoner may not proceed in forma pauperis in a civil action if, on three or more occasions, the prisoner had a case dismissed as frivolous, malicious, or for failure to state a claim, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C.A. § 1915(g) (West 2006).

³See *Johnson v. Anderson, et al.*, No.4:01-CV-492-A (N.D. Tex. December 28, 2001 Memorandum Opinion and Order Under 28 U.S.C. §§ 1915(e)--no appeal taken); *Johnson v. Anderson, et al.*, No.4:01-CV-315-Y (N.D. Tex. September 7, 2001 Order of Dismissal Under 28 U.S.C. §§ 1915A(b) and 1915(e)--no appeal taken); and *Johnson v. Anderson, et al.*, No.4:01-CV-172-Y (N.D. Tex. September 10, 2001 Order of Dismissal Under 28 U.S.C. §§ 1915A(b) and 1915(e)--no appeal taken).

entitled to proceed *in forma pauperis* in this action. If he wishes to proceed with this suit, he must pay the full filing and administrative fees.

RECOMMENDATION

It is therefore RECOMMENDED that Eddie Lee Johnson (Tarrant CID 0235907 [TDCJ No. 554799]) should not be allowed to proceed *in forma pauperis* by the district judge.

It is further RECOMMENDED that the district judge inform plaintiff Johnson that his complaint in this action will be subject to dismissal without further notice under Federal Rule of Civil Procedure 41(b), unless Plaintiff pays to the clerk of Court the full filing and administrative fees of \$400.00⁴ within seven (7) days after the district judge's order.

NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 10 days after being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court is extending the deadline within which to file specific written objections to the United States Magistrate Judge's proposed

⁴In addition to the filing fee of \$350, the District Court Miscellaneous Fee Schedule, effective May 1, 2013, requires payment of an administrative fee for filing a civil action in district court of \$50. See 28 U.S.C. § 1914(a) and District Court Miscellaneous Fee Schedule, note 14.

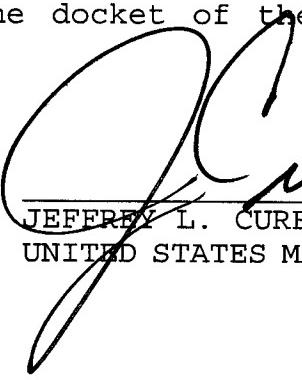
findings, conclusions, and recommendation until November 8, 2013. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual finding and legal conclusion if it has been accepted by the United States District Judge. See *Douglass v. United Services Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is ORDERED that Plaintiff is granted until November 8, 2013 to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge, be and is hereby, returned to the docket of the United States District Judge.

SIGNED October 17, 2013.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE